(29,808)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 498

NICHOLAS WEBSTER, APPELLANT,

vs.

ALBERT B. FALL, SECRETARY OF THE INTERIOR; J. GEORGE WRIGHT, SUPERINTENDENT OF THE OSAGE AGENCY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 6, 1923

[fol. 1] **IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA**

In Equity. No. 566

NICHOLAS WEBSTER, Plaintiff,

vs.

ALBERT B. FALL, Secretary of the Interior of the United States, et al., Defendants.

CITATION AND SERVICE—Filed July 31, 1923

UNITED STATES OF AMERICA, ss:

Albert B. Fall, Secretary of the Interior of the United States; J. George Wright, Superintendent of the Osage Agency, and George N. Wise, Special Disbursing Agent, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal allowed and filed in Clerk's office of the United States District Court for the Western District of Oklahoma, wherein Nicholas Webster is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the party in that behalf.

Witness the Honorable John H. Cotteral, Judge of the United States District Court for the Western District of Oklahoma, this 28th day of July, 1923.

John H. Cotteral, Judge.

As Attorney of record for the defendants, J. George Wright, Superintendent of the Osage Agency, and George N. Wise, Special Disbursing Agent, I hereby acknowledge and accept service of the above and foregoing citation, this 31st day of July, 1923, and hereby enter an appearance in said appeal for said appellants, J. George Wright and George N. Wise.

Roy St. Lewis, Asst. United States Attorney for the Western District of Oklahoma and Attorney of Record for J. George Wright and George N. Wise.

[File endorsement omitted.]

[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

BILL IN EQUITY—Filed Dec. 9, 1922

The plaintiff, Nicholas Webster, brings this suit for relief upon behalf of himself, and upon behalf of all members or persons on the Osage Roll, similarly situated as is this plaintiff, who may wish to join herein, and share in the relief granted by this suit, and alleges that the plaintiff is a citizen of the United States, residing and living at Fairfax, Osage County, Oklahoma; that he is a member of the Osage Tribe of Indians, his name being opposite number 184 on the official roll of said tribe; that the defendant Albert B. Fall is the Secretary of the Interior of the United States; that the defendant J. George Wright is the Superintendent for the United States in charge of the Osage Agency, and resides and receives his mail in Pawhuska, Oklahoma, the seat of the Osage Agency, same being an Indian Agency for and over the Osage Tribe of Indians in Oklahoma, and established by the United States; that the defendant George N. Wise is a Special Disbursing Agent of the United States whose duty is to pay and disburse the funds and moneys due Individual Osages to such individual, the said Wise residing in Pawhuska, Oklahoma, the seat of the Osage Agency.

[fol. 3] 2. This suit is brought to enjoin the defendants, and each of them, from enforcing against this plaintiff section 2087 of the Revised Statutes of the United States, as well as all orders, rules or regulations, written or verbal, which section, orders, rules and regulations deprives this plaintiff of his property and liberty without due process of law, and in violation of the 5th Amendment to the Constitution of the United States; and, to enjoin the arbitrary, unlawful, and capricious acts and conduct of the defendants, their agents and employees, which acts and conduct of said defendants deprives this plaintiff of his property and liberty without due process of law, and in violation of the 5th amendment to the Constitution of the United States, and the plaintiff avers that the right and matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

3. That the defendant, J. George Wright, as Superintendent of the Osage Agency is the local representative of the Department of the Interior for the Osage Agency and has charge as Superintendent of the Osage Agency and its employees, but under the direction of the Secretary of the Interior, to whom, and his agents and employees the Superintendent makes his reports as such Superintendent; that as such Superintendent he, in conjunction with the defendant, George N. Wise, is charged with the duty of making the quarterly payments to Osage Allottees.

4. That the defendant George N. Wise, as such Special Disbursing Agent of the United States, is, among other things, charged with the

duty of making quarterly requisition on the Treasury Department of the United States, for money with which to make payment to the individual Osage Allottees, and the said George N. Wise does make such quarterly requisitions, and does receive the money with which to make such quarterly payments, and does receive the money with which to pay quarterly this plaintiff, the amount due this plaintiff and other Osage Allottees, but the said George N. Wise and the said J. George Wright fail and refuse to make the quarterly payments to this plaintiff, as required by law, as will be more fully set forth hereinatfer.

[fol. 4] 5. That by virtue of a treaty of September 29th, 1865, between the United States and the Osage Tribe of Indians, the Osages conveyed to the United States, as trustees for sale, the lands owned by the Osage Tribe of Indians in the State of Kansas; that the United States as such trustees, sold said Kansas lands, for, to-wit, the sum of $10,660,000, of which received sum $8,327,000 was placed in the treasury of the United States to the credit of the Osage Tribe or Nation of Indians, upon which credited amount the United States paid interest at the rate of five per centum per annum to the said Osage Tribe; that from the said amount received from the sale of the said Kansas Lands, aforesaid, the Osage Tribe of Indians purchased from the Cherokee Indians, for a consideration of $1,099,000, the present lands of the Osages in Oklahoma, taking title in the name of the United States, "In trust nevertheless and for the use and benefit of the Osage Indians."

6. On June 28, 1906, the President of the United States approved an Act of Congress, entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes;" that said Act of June 28, 1906 (hereinafter referred to as the Allotment Act) provided for the making of a roll of the "legal membership" of said Osage Tribe, which said roll when completed was made up and consisted of 2,229 Osages, and such roll contained then, and now contains, the name of this plaintiff; that by virtue of authority given in said Allotment Act the surface of said Osage Reservation was allotted to the individual members of said Osage Tribe, and this plaintiff received his pro rata share of such lands formerly owned by the Osage Tribe of Indians, by a deed in fee-simple, said deed containing a restriction against alienation, except as provided in said Allotment Act; that said Allotment Act provided for the issuance of certificates, upon application, to the adult members of said tribe, or allottees, which certificate authorized the individual allottee to sell and convey his surplus lands, the homestead of each allottee to remain inalienable until otherwise provided [fol. 5] by Congress, except in such Act provided.

7. That under authority of said Allotment Act, the oil, gas, coal and other minerals in and under said allotted lands were reserved to the Osage Tribe of Indians for a period of twenty-five years, said mineral lands to be leased by the said tribe through its Tribal Council, subject to the approval of the Secretary of the Interior.

8. Said Allotment Act provides that all the funds belonging to the Osage Tribe, and all moneys due, or that might become due, to the Osage Tribe from the sale of their lands in Kansas, and on claims against the United States, shall be held in trust by the United States for a period of twenty-five years, except that said funds and moneys, aforesaid, should be segregated and placed to the credit of the "individual members of the Osage Tribe on a basis of a pro rata division among the members of said tribe," as shown by the authorized roll of membership provided for in said Act, "or to their heirs," said credit to draw interest as provided by law, which was and is at the rate of five per centum per annum, said interest to be "paid quarterly to the members entitled thereto".

9. Said allotment Act further provided, that the royalties received from oil, gas coal and other mineral leases mentioned above, "shall be placed in the treasury of the United States to the credit of the members of the Osage Tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this Act, and the same shall be distributed to the individual members of said Osage Tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States."

10. Said Allotment Act provides that the lands, moneys, and mineral interests herein provided for, of any deceased member of the Osage Tribe shall descend to his or her legal heirs according to the laws of the State of Oklahoma; that by virtue of the foregoing provisions of law, this plaintiff became the owner of a fixed, vested individual interest in the moneys and mineral interests, aforesaid, same being due and payable quarterly.

[fol. 6] 11. On April 18, 1912, an Act of Congress became effective, entitled, "An Act Supplementary to an Amendatory of the Act of June 28, 1906," wherein authority was given to the Secretary of the Interior, upon application therefor, to pay to the Osage Allottees all or part of the funds held in the treasury of the United States to their individual credit; and, that any individual member of the Osage Tribe, being an adult, may dispose of any or all of his estate, real, personal or mixed, by will, in accordance with the laws of Oklahoma, such will being subject to approval by the Secretary of the Interior, and many Osage Allottees have withdrawn their funds from the treasury, and their estate was conveyed by will upon their death, as provided for in this Supplementary Act, aforesaid.

12. By virtue of and in accordance with the above provisions of law, this plaintiff became entitled to and there was segregated and placed to his credit in the treasury of the United States the sum of $3,819.00, drawing interest from the United States at the rate of five per centum per annum, and this plaintiff became entitled to and there has been placed to his credit in the treasury of the United States, and paid to him quarterly, his pro rata share from the income produced and received from oil and gas, and from oil and gas leases, except, that from March 3, 1921, the income, aforesaid, has been

paid only in part to this plaintiff, and the remainder has been wrongfully and unlawfully held by the defendants.

13. That on March 3, 1921, there became effective an Act of Congress, section 4 of which Act, among other things, provides: "That from and after the passage of this Act the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency [fol. 7] $1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, * * * all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the Superintendent of the Osage Agency,——".

14. That prior to 1915, Lo-tah-tse-a, an enrolled member of the Osage Tribe of Indians, whose name is opposite the number 364, died, leaving this plaintiff as a surviving husband; that the courts of Oklahoma adjudged this plaintiff to be entitled to a one-half interest in the moneys and mineral interests of his deceased wife, Lo-tah-tse-a, the same being interests and estate acquired by Lo-tah-tse-a as an allottee under the Act of June 28, 1906; that the aforesaid adjudication of the courts was recognized by the Interior Department of the United States, and an extra one-half pro rata share, as provided in the Allotment Act, was transferred and placed to the credit and account of this plaintiff on the books and records of the Interior Department, and the Treasury Department of the United States, and by reason thereof this plaintiff was paid by the defendants herein, and at the regular quarterly Osage payments, the one-half interest and income due this plaintiff from the estate of Lo-tah-tse-a, deceased, up until the March, 1921 payment, and since the March, 1921 payment, and because of the Act of March 3, 1921, this income from the estate of Lo-tah-tse-a has not been paid by the defendants.

15. That the income of this plaintiff due from the sources aforesaid, as an allottee of property formerly owned by the Osage Tribe of Indians, and due and payable to this plaintiff by the defendants since March 3, 1921, is in excess of $12,000; that the income from the sources aforesaid due this plaintiff during the same period of time and from the estate of Lo-tah-tse-a, deceased, same to be paid by and through the defendants, is in excess of $6,000, and $1,000 should have been paid by the defendants each quarter since March 3, 1921.

16. That in accordance with the Act of March 3, 1921, aforesaid, the defendants have paid, generally speaking, all adult Osage allot- [fol. 8] tees having a certificate of competency all of their said in-

come as such allottees, as provided in the said Act of March 3, 1921; that when making the quarterly payments these defendants have paid many adult allottees not having a certificate of competency the full amount of $1,000 as provided in said Act; that the money with which to pay this plaintiff has been subject to the command, disposal, check and warrant, of the defendants, J. George Wright and George N. Wise, but said defendants, J. George Wright and George N. Wise have failed and refused to pay this plaintiff the $1,000 due him at each quarterly payment under the Act of March 3, 1921, but they and each of them have unlawfully, arbitrarily, and capriciously withheld such $1,000 from this plaintiff, and have failed and refused to pay the same during the following quarter after the regular quarterly payment, until in July, 1922, there was due this plaintiff by virtue of the Act of March 3, 1921, in excess of $3,000, which amount was so unlawfully, arbitrarily and capriciously withheld by said defendants; that there was a regular quarterly payment made in September of 1922, and a regular quarterly payment is to be made in December, 1922, and other and many quarterly payments to follow until the year 1946; that this plaintiff is forty-seven years of age, of sound body, and in the natural course of men of his age and physical condition should live many years in which to receive and enjoy the income to be paid to him at the regular quarterly payments, aforesaid.

17. That during the year 1918, the predecessors in office of the defendant, Albert B. Fall, and the defendants J. George Wright and George N. Wise, held-up and refused to pay and make these quarterly payments to many Osages, same consisting of the income aforesaid, and at other times to other Osages, including this plaintiff, they have so refused, said refusal being because of and based upon section 2087 of the Revised Statutes of the United States, and orders, and regulations issued under and by virtue of authority supposed to be and exist in said section 2087, and this plaintiff is informed, and such information is such that he believes the same to be true, and he believes, and so avers, that the said defendants have refused and do [fol. 9] now refuse to pay this plaintiff the money due him because of the authority supposed to be and exist in section 2087 of the Revised Statutes of the United States, and the orders, rules, and regulations issued to J. George Wright and Geo. N. Wise, by the defendant Albert B. Fall, and his predecessors in office, by their, and his agents and employees; that said section provides that "No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and head-men of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country"; that the territory formerly constituting the Osage Indian Reservation is now Osage County in the

State of Oklahoma, under the State and Federal jurisdiction, with a population of about 40,000 people, only about 2,229 of whom are Indians, and the chiefs and head-men of the Osages have no authority or jurisdiction whatsoever in the enforcement of the liquor laws; that all of said acts and conduct, aforesaid, of the defendants in withholding the money of this plaintiff is to the great loss and irreparable injury of this plaintiff.

18. This plaintiff is advised by his counsel, and he therefore charges, that said section 2087 of the Revised Statutes of the United States, and all orders, rules or regulations issued by the Department of the Interior, its officers and employees, to the defendants J. George Wright and George N. Wise, insofar as said statute, orders, rules, and regulations are intended to apply to the withholding of the moneys and income of this plaintiff, due from the sources aforesaid, and under the Act of March 3, 1921, and the acts and conduct aforesaid, of the defendants J. George Wright and Geo. N. Wise in withholding said quarterly payments provided for in the Act of March 3, 1921, from this plaintiff, are violative of the Constitution of the United States in the following respects:

(a) That said section 2087, and said orders, rules and regulations, and said unlawful, arbitrary and capricious acts, deprives this plaintiff of his property without due process of law contrary to the provisions [fol. 10] of the 5th Amendment to said Constitution.

(b) That said section 2087, and said orders, rules, or regulations, and said arbitrary, capricious and unlawful acts, deprives this plaintiff of his liberty without due process of law contrary to and in violation of the 5th Amendment to the said Constitution.

(c) That said section 2087, said orders, rules or regulations, violates the Commerce Clause of said Constitution.

(d) That said section 2087, and said orders, rules or regulations violates the Tenth Amendment to said Constitution.

(e) That said section 2087, and said orders, rules or regulations, and said arbitrary,, capricious and unlawful acts, violates the spirit and intent of the entire Constitution.

19. Wherefore this plaintiff in as much as he is remediless in the premises according to the strict rules of the common law, and can have complete relief only in a court of equity where matters of this character are properly cognizable, and to prevent a multiplicity of suits by this plaintiff, files this complaint in equity, and prays:

20. That the defendants, Albert B. Fall, Secretary of the Interior of the United States; J. George Wright, Superintendent of the Osage Agency; and, George N. Wise, Special Disbursing Agent, may be required to make direct, true and complete answer to this bill, but not under oath (answers under oath being hereby waived); that section 2087 of the Revised Statutes of the United States, all orders, rules or regulations, and all unlawful, arbitrary and capricious acts of the defendants, which deprives the plaintiff of his property and

liberty without due process of law, each and all be adjudged to violate the Constitution of the United States and to be void; that a temporary injunction may immediately issue and upon final hearing be made permanent; (1) enjoining the said Albert B. Fall, as Secretary of the Interior, J. George Wright as Superintendent of the Osage Agency, and George N. Wise, Special Disbursing Agent, and each of them, their successors in office, and each, every and all persons claiming to act under their, or any of their, authority or control [fol. 11] from enforcing section 2087 of the Revised Statutes of the United States as against the plaintiff herein, and from enforcing any order, rule or regulation which deprives this plaintiff from receiving $1,000 quarterly, as provided by the Act of March 3, 1921; (2) enjoining the defendants J. George Wright, and George N. Wise from refusing to pay this plaintiff $1,000 quarterly as required by the Act of March 3, 1921.

21. That upon final hearing a mandatory injunction may issue against said defendants J. George Wright and George N. Wise, commanding and requiring that the moneys and funds due this plaintiff under the Act of March 3, 1921, be transferred, assigned and paid over unto this plaintiff. And to such other and further relief as the nature of this case may require, and to the Court shall seem meet and proper.

22. That a writ of subpœna of the United States directed to Albert B. Fall, Secretary of the Interior of the United States; J. George Wright, Superintendent of the Osage Agency; and, George N. Wise, Special Disbursing Agent, may issue, commanding them on a certain day to appear and answer this bill, and to abide by and perform such decree as may be entered by this court.

Preston A. Shinn, Solicitor for Plaintiff.

STATE OF OKLAHOMA,
County of Osage, ss:

Nicholas Webster of lawful age, and being first duly sworn, says that he is the plaintiff in the foregoing bill, and that he has had said bill read to him, and that he knows the contents thereof, and that all the allegations of said bill are true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

Nicholas Webster.

Subscribed and sworn to before me this 4th day of December, 1922. Margaret Curry, Notary Public. (Seal.) My Commission expires Sept. 20, 1926.

[File endorsement omitted.]

[fol. 12] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

MOTION TO DISMISS—Filed December 27, 1922

Come now J. George Wright, and George N. Wise, two of the defendants above named, by J. W. Scothorn, Assistant United States Attorney, and for their separate motion, move the court to dismiss the above styled cause for the following reasons to-wit:

1st. For that *their* is no equity shown in the bill.

2nd. For that the subject matter of the bill is exclusively within the political division of the United States Government and is not subject to review by this court.

J. W. Scothorn, Assistant United States Attorney, Solicitor for the Defendants J. George Wright and George N. Wise.

[File endorsement omitted.]

[fol. 13] IN UNITED STATES DISTRICT COURT

[Caption omitted]

ANSWER—Filed April 16, 1923

Now comes the defendants J. George Wright and George N. Wise, by Roy St. Lewis, Assistant United States Attorney for the Western District of Oklahoma, and for their answer to complainant's bill, specifically admits each and all of the averments in said bill of complaint contained, except as hereinafter qualified or specifically denied. Such admission is intended to be of the same force and effect as if the averments of the bill were herein repeated at length, save only as the same are herein modified or denied.

1. And the said defendants deny the averments contained in the last paragraph of Section 2 of said bill of complaint, that avers that the right and matter in controversy exceeds, exclusive of interests and costs, the sum and value of Three Thousand Dollars ($3,000.00); and in this behalf, the defendants aver that pursuant to the terms of the Act of March 3, 1921, and the regulations of the Secretary of the Interior, there was available for payment to the said Nicholas Webster, from March 3, 1921, to December 9, 1922, (the date of the filing of this suit), Seven Thousand Dollars ($7,000.00); that during said period of time, Five Thousand Two Hundred Twenty-nine and 62/100 Dollars ($5,229 62) was paid to said Nicholas Webster under supervision, leaving a balance in said account of One Thousand Seven Hundred Seventy and 38/100 Dollars ($1.770.38), which is the amount subject to the controversy under Discussion.

2. And the defendants deny the averments set out in Section 12 of the bill of complaint, that the amount there set out has been wrongfully and unlawfully held by defendants.

3. And the defendants further deny the complainant's income from March 3, 1921 to the time of filing this bill to exceed Twelve Thousand Dollars ($12,000.00) as set out in Section 15 of the complainant's bill.

[fol. 14] 4. And the defendants deny that the averments set out in Section 16 of the complainant's bill that all adult Osage allottees not having certificates of competency are paid the full amount of One Thousand Dollars ($1,000.00) quarterly; and in this behalf, the defendants deny that they are unlawfully, arbitrarily and capriciously withholding any money due the plaintiff.

5. The defendants assert that the complainant Nicholas Webster is a habitual drunkard, and that payments are made intermittantly to said complainant, pursuant to the terms of the Act of March 3, 1921 and the regulations of the Secretary of the Interior and such regulations under and by virtue of authority existing by an Act of Congress known as Section 2087 Revised Statutes.

6. Said refusal to make entire payments was not made arbitrarily nor with any view of depriving complainant herein of his legal rights, but only of defendant's desire to make due compliance with the Acts of Congress of the United States of America.

Wherefore, the defendants pray this Court to make such order and decree in the premises as the true intent and meaning of the Acts of Congress of the United States and the regulations of the Secretary of the Interior may require. If the Court shall find and determine that said laws and regulations are in full force and effect, that the Court shall give judgment dismissing complainant's bill and the defendants ask this Honorable Court to grant such other and further relief as shall be just and equitable.

Roy St. Lewis, Assistant United States Attorney.

[fol. 15] UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

Roy St. Lewis, being first duly sworn, deposes and says, that he has read the above answer and that the things set out therein are true, as he verily believes.

Roy St. Lewis.

Subscribed and sworn to before me, this 16 day of April, A. D. 1923. Edward H. Lewis, Deputy Clerk U. S. Dist. Court. (Seal of the Court.)

[File endorsement omitted.]

[fol. 16] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

DECREE—Filed May 17, 1923

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the petition of the plaintiff be dismissed for want of equity, and upon the merits of the suit; and, that the plaintiff pay the costs by him made in this behalf.

To which decree of the court and every part thereof, the plaintiff excepted, and his exceptions were by the court allowed, and the plaintiff on the day this decree was rendered, and immediately ther-after, and in open court, gave notice of, and prayed an appeal from said decree to the Supreme Court of the United States, which appeal was by the court allowed in open court, upon the giving by the plaintiff of a bond conditioned as provided by law, and in the sum of Five Hundred Dollars.

Dated May 17th, 1923.

John H. Cotteral, District Judge.

[File endorsement omitted.]

[fol. 17] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

STATEMENT OF EVIDENCE—Filed July 31, 1923

It is hereby agreed by counsel for Nicholas Webster, plaintiff, and for J. George Wright and George N. Wise, Defendants, that the following is a correct statement of the evidence in condensed form as it was adduced on the hearing of the above entitled cause:

1. The petition of the plaintiff was introduced without objection.

2. That during a part of the month of July, 1922, the defendants J. George Wright, Superintendent, and George N. Wise, Disbursing Agent, had under their charge and control $3,030.00 of the moneys belonging to the Plaintiff, Nicholas Webster, due the said plaintiff from the $1,000 payments, quarterly, provided for in section 4 of the Act of March 3, 1921, and that said money would have been paid to the said plaintiff, except for the fact that the said plaintiff drinks intoxicating liquors, which were within convenient reach of the plaintiff, and the plaintiff was being carried by the defendants

on a "drunk list" carried as part of the records of the Osage Indian Agency; that at the time this suit was instituted by the plaintiff in December, 1922, there was due to the plaintiff from the defendants, from the source aforesaid, $1,770.38, and that another payment of $1,000 was available on the 18th day of December, 1922; that during the period from March 3, 1921 to December 9th, 1922, the date this suit was instituted, the total income of the plaintiff carried on the books and records of the defendants was in excess of $20,000, and that the defendants at all times had available moneys of the plaintiff to pay the $1,000 quarterly, provided for in the Act of March 3, 1921, and that said payments provided for in the Act of March 3, [fol. 18] 1921, would have been made to the plaintiff by the defendants, J. George Wright, Superintendent, and George N. Wise, Disbursing Agent, except for Section 2087 of the Revised Laws of the United States, and regulations issued to carry into effect said section; that the plaintiff is a full-blood member and allottee of the Osage tribe of Indians, and without a certificate of competency provided for in the Act of June 28, 1906, allotting the Osages.

It is agreed by counsel that the evidence set forth in the two paragraphs marked "1" and "2" is a full and complete statement of the material evidence adduced; that this agreement is for the purpose of reducing the record, and that the same may be used by the Supreme Court of the United States in their consideration of this case on appeal.

Preston A. Shinn, Solicitor for Plaintiff. Roy St. Lewis, Asst. United States Attorney and Solicitor for Defendants J. George Wright and George N. Wise.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING STATEMENT OF EVIDENCE—Filed July 31, 1923

Approved, this 31st day of July, 1923, and ordered to be filed by the Clerk of this Court as a true and complete statement in condensed form of the evidence adduced on the hearing of the above entitled cause, and that the same be made a part of the record on appeal.

John H. Cotteral, District Judge.

[File endorsement omitted.]

[fol. 19] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed July 28, 1923

To the Honorable John H. Cotteral, United States Judge for the Western District of Oklahoma:

The above named plaintiff feeling aggrieved by the decree made and entered in the above entitled suit on the 17th day of May, 1923, does hearby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and the said plaintiff, Nicholas Webster, prays that an appeal be allowed, and that citation issue as provided by law; that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Your petitioner further prays that the proper order touching the security to be required of him to perfect this appeal be made.

Preston A. Shinn, Solicitor for Plaintiff.

The foregoing prayer for an appeal is hereby granted and an appeal allowed said plaintiff, upon the giving by him of a bond conditioned as required by law, and in the sum of Five Hundred Dollars.

John H. Cotteral, Judge of the United States District Court for the Western District of Oklahoma.

[File endorsement omitted.]

[fol. 20] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 28, 1923

Now on this 29th day of July, 1923, comes the above named plaintiff, by his solicitor, Preston A. Shinn, and says that the decree in the above entitled suit made and entered on the 17th day of May, 1923, against the plaintiff and in favor of the defendants, is erroneous and unjust to the plaintiff, and for the following reasons:

1. The court erred in finding the issues in favor of the defendants.

2. The court erred in rendering a decree in favor of the defendants and against the plaintiff.

3. The court erred in holding that Section 2087 of the Revised Statutes of the United States is a valid law in so far as said section was intended to apply to this plaintiff on the 3rd day of March, 1921, or at any time thereafter.

4. The court erred in holding that the acts of the defendants in withholding the moneys mentioned in plaintiff's petition, did not violate the Constitutional rights of the plaintiff, as preserved and protected by the 5th Amendment to the Constitution of the United States.

5. The court erred in holding that the acts and conduct of the defendants, in withholding the moneys and funds belonging to the plaintiff, did not deprive the plaintiff of his property without due process of law as guaranteed in the 5th Amendment to the Constitution of the United States.

[fol. 21] 6. The court erred in holding that the acts and conduct of the defendants, in withholding the moneys and funds belonging to the plaintiff, did not deprive the plaintiff of his liberty without due process of law as guaranteed in the 5th Amendment to the Constitution of the United States.

7. The court erred in holding that section 2087 of the Revised Laws of the United States, or the rules and regulations issued by the Secretary of the Interior of the United States, under authority of said Section 2087, and enforced by the defendants against this plaintiff, did not deprive the plaintiff of his property and his liberty in violation of the 5th Amendment to the Constitution of the United States.

8. The court erred in not holding that Section 2087 of the Revised Laws of the United States, if applied to this plaintiff, and all rules and regulations issued for its enforcement, if applied to this plaintiff, and the acts, conduct, and refusal of the defendant officers of the United States in enforcing said Section 2087 and said rules and regulations, and in withholding the moneys and property of this plaintiff from the plaintiff, were in violation of the 5th Amendment to the Constitution of the United States.

9. The court erred in holding that Section 2087 of the Revised Laws of the United States, and the rules and regulations issued thereunder, were within the authority granted by the people in the Commerce Clause, or any other section or clause, of the Constitution of the United States.

10. The court erred in refusing to issue the injunction prayed for in the petition of the plaintiff.

Wherefore, the plaintiff prays that the said decree be reversed, and the District Court directed to issue said injunction against the defendants, as prayed for in the petition of the plaintiff, and that the

plaintiff may have all other relief which to the court may seem just and proper, the premises considered.

Preston A. Shinn, Solicitor for Plaintiff.

[File endorsement omitted.]

[fol. 22] Bond on Appeal—Filed July 28, 1923 [for $500; approved, Cotteral, J.; omitted in printing]

[fol. 23] In the District Court of the United States for the Western District of Oklahoma

[Title omitted]

Præcipe for Transcript—Filed Aug. 7, 1923

To the above-named defendants and their attorney of record:

In the above entitled cause, the appellant gives notice of his intention to take and file the transcript of the record herein in the Supreme Court of the United States, to be printed under the supervision of its clerk and under its rules. And the appellant hereby designates the following parts and instruments of the record in said cause to be included in said transcript:

1. The complaint, including caption.

2. Motion of defendants Wright and Wise to dismiss, without caption.

3. Answer of defendants, without caption.

4. Decree of the court.

5. Statement of the evidence, without caption.

6. All papers filed after decree rendered looking towards an appeal, including this designation of transcript.

Nicholas Webster, By Preston A. Shinn, His Solicitor.

I hereby accept service of the above and foregoing notice, this 28th day of July, 1923, and acknowledge receipt of a copy thereof.

Roy St. Lewis, Asst. United States Attorney and Attorney for Defendants W-ight and Wise.

[File endorsement omitted.]

[fol. 24] CLERK'S CERTIFICATE TO TRANSCRIPT

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Harry L. Finley, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court, in case No. 566, in Equity, wherein Nicholas Webster, is complainant, and Albert B. Fall, Secretary of the Interior of the United States; J. George Wright, Superintendent of the Osage Agency; and, George N. Wise, Special Disbursing Agent, are defendants, as full, true and complete as the said transcript purports to contain and as called for by the designation and stipulation of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of Guthrie, in said District, this 7th day of August, A. D. 1923.

Harry L. Finley, Clerk, By Theodore M. Filson, Deputy Clerk. (Seal of the United States District Court, Western District of Oklahoma.)

Endorsed on cover: File No. 29,808. W. Oklahoma D. C. U. S. Term No. 498. Nicholas Webster, appellant, vs. Albert B. Fall, Secretary of the Interior; J. George Wright, Superintendent of the Osage Agency, et al. Filed August 13th, 1923. File No. 29,808.